93-626

No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

JUAN FRANCISCO GONZALES,
Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

Petition for Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division Three

PETITION FOR WRIT OF CERTIORARI

FRED W. ANDERSON
ANDERSON & ANDERSON
1851 E. First Street
Suite 1450
Santa Ana, CA 92705
(714) 835-4400
Attorney for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether or not the undated information in an affidavit in support of a search warrant is presumed "stale" as the United States Court of Appeal for the First Circuit has said in *Rosencranz v. United States* and the Sixth Circuit said in *United States v. Boyd* or the "good faith" exception under *United States v. Leon* is sufficient to insulate the warrant from an attack of staleness as the United States Court of Appeals for the Fourth Circuit held in *United States v. Anderson.*

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
HOW THE FEDERAL QUESTION IS PRESENTED	4
STATEMENT OF FACTS	4
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	12

TABLE OF AUTHORITIES

CASES — Page

Market Street Railroad Co. v. Railroad Commission, 324 U.S. 548 (1944) 2
Illinois v. Gates, 462 U.S. 213 (1983) 4
Rosencranz v. United States, 356 F.2d 310 (1966) ..8, 9, 11
United States v. Boyd, 422 F.2d 791 (1970) 9
United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) 10
United States v. Anderson, 851 F.2d 727 (4th Cir. 1988) 10, 11
Sgro v. United States, 287 U.S. 206, 53 S.Ct. 138, 77 L.Ed. 260 (1932) 11

STATUTES

Health & Safety Code, § 11351 2
Penal Code, § 1203.073(b)(1) 2
28 U.S.C. § 1257(3) 2

SECONDARY AUTHORITIES

United States Constitution, Amendment IV 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

No. ———

JUAN FRANCISCO GONZALES,
Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

Petition for Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division Three

---

PETITION FOR WRIT OF CERTIORARI

Petitioner, JUAN FRANCISCO GONZALES, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the California Court of Appeal, Fourth Appellate District, Division Three, issued on January 29, 1993.

OPINIONS BELOW

The opinion of the California Court of Appeal, Fourth Appellate District, Division Three was not published but appears as Appendix A (pages 1a through 9a).

The order of the Supreme Court of California denying Petitioner's petition for review on direct appeal was entered in the Official Minutes of that court on May 12,

1993. The minute entry is reproduced in Appendix B at page 10a.

JURISDICTION

Petitioner invokes the jurisdiction of this Court, under Title 28, United States Code, section 1257(3) to review a judgment of the California Court of Appeal, Fourth Appellate District, Division Three which was entered on January 29, 1993. The California Supreme Court denied review in this case on May 12, 1993. The present petition for writ of certiorari is filed within the required 90 day period following the final entry of judgment. The judgment of the Court of Appeal became final for the purposes of this Court with the denial of review by the California Supreme Court on May 12, 1993. (Market Street Railroad Co. v. Railroad Commission, 324 U.S. 548, 550-552 (1944)). Thus, the instant judgment is a final decision rendered by the highest court of the State of California interpreting rights under the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> "The right of the people to be secured in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

In an information filed by the District Attorney of Orange County of February 28, 1991, petitioner was charged with one count of possession of cocaine for sale in violation of California *Health & Safety Code* § 11351.

It was further alleged that during the commission of that offense, petitioner had in his possession 28.5 grams

or more of cocaine or 57 grams or more of a substance containing cocaine within the meaning of *Penal Code* § 1203.073(b)(1) (CT 25).

On March 4, 1991, petitioner was arraigned in the Orange County Superior Court and entered a plea of not guilty to the charges and denied the special allegations (CT 24). On Augusa 2, 1991, petitioner's motion pursuant to 1538.5 was heard and denied (CT 127).

The allegation pursuant to *Penal Code* § 1203.073(b)(1) was stricken in the interest of justice, the Court finding it an unusual case (RT 33).

On September 13, 1991, as part of plea bargain, the defendant pled guilty to *Health & Safety Code* § 11351 and the enhancement pursuant to § 1203.073(b)(1) (CT 132; RT 32-33). On this same day, petitioner was granted probation on certain terms and conditions, including spending 365 days in custody and a fine of $100 (CT 134). The Court ordered a stay of jail time pending appeal and set bail on appeal at $25,000. Petitioner was ordered to post the bail September 16, 1991 (CT 136). Bail in the amount of $25,000 was posted on September 16, 1991 (CT 137).

Petitioner's Notice of Appeal was filed on November 1, 1991 (CT 139). In an unpublished decision filed on January 29, 1993, the Court of Appeal, Fourth Appellate District, Division Three, affirmed the Judgment of the Superior Court and held that the failure to specify the dates of certain information did not make that information inadmissible and giving it minimal weight there was probable cause for the search warrant.

On May 12, 1993, the California Supreme Court denied Petitioner's petition for direct review (Appendix B).

HOW THE FEDERAL QUESTION IS PRESENTED

In the Orange County, California Superior Court, petitioner moved to suppress evidence on the ground that there was no probable cause for the issuance of the search warrant. (CT 36.) The trial court denied the motion to suppress evidence. (CT 127.)

The California Court of Appeal, Fourth Appellant District, Division Three, concluded that there was probable cause under the totality of circumstances test of *Illinois v. Gates*, 462 U.S. 213 (1983). (App. A.)

Petitioner filed a petition for review to the State Supreme Court arguing that his Fourth Amendment rights had been violated because the critical information supporting the search warrant was "stale" and the affidavit in support of the search warrant lacked probable cause without that information. The California Supreme Court denied petitioner's request for review.

STATEMENT OF FACTS

In November of 1990, a confidential informant, who was cooperating with the City of Orange Police Department in order to receive consideration in a pending narcotic case, indicated that he had purchased cocaine from a person he identified as "Memin" in October of 1990. The confidential informant stated that he had purchased ounces, ¼ kilo and ½ kilo of cocaine at a video store located at 250 East Mission Street in the City of Pomona (CT 87:10-12).

The confidential informant further stated that "Memin" normally has cocaine and marijuana at the video store, but sometimes has to travel a short distance, approximately 10-15 minutes, to obtain larger quantities (CT 87:21-23). The confidential informant further stated that he believes "Memin" lives in Anaheim (CT 87:24-26). The confidential informant knows a person named "Nacho" who drives a red Cougar and a green or dark Bronco (CT 88:9-11).

On November 13, 1990 the Orange Police Department set up a surveillance on the video store located at 250 East Mission Street in the City of Pomona. Between 12:45 and 1900 hours they logged 16 vehicles containing approximately 23 people, all male Hispanic, ranging in ages from their 20s to their 40s. Two vehicles were observed on two different occasions and one vehicle was observed on three occasions that evening (CT 87:93).

On November 14, 1990 the surveillance was continued beginning at 11:05 a.m. and continuing to 10:30 p.m. During that period of time, more than 18 vehicles and more than 26 male Hispanics, with ages ranging from their 20s to their 40s, were observed. On November 15, 1990 surveillance was continued from 11:45 a.m. to 5:07 p.m. During that period of time, the Orange Police logged at least 12 vehicles carrying approximately 15 Hispanics, ranging in ages from their 20s to their 40s (CT 87:93-103).

On November 27, 1990 the Orange Police Department set up for surveillance at 1964 West Catalpa in the City of Anaheim. They observed a 1984 Ford Thunderbird driven by "Vidrios", the "primary suspect", go to the video store at 250 East Mission Street in the City of Pomona, after picking up another subject in Anaheim and later to 262 10th Street in the City of Pomona. At approximately 1:25 p.m., "Vidrios" is seen driving the 1984 Ford Thunderbird from the 10th Street address to the "area of 1166 Chantilly, Anaheim." Prior to making the contact at 1166 Chantilly, "Vidrios" dropped off the other subject "approximately ¼ mile away from the residence." It is unclear whether this subject is the same person picked up in Anaheim or someone else (CT 107-110).

"Vidrios" then left the residence " 'utilizing counter surveillance' driving techniques throughout the residential tract, picking up the other subject and proceeding to

another residence in the immediate area of 846 South Mancos, Anaheim." After leaving the Mancos address "subjects were utilizing a pay phone in the area of Sunkist and Lincoln . . ." (CT 109-110)

The affiant, at some point in time not specified in the search warrant, made contact with "former narcotics officer John Quinzo of the Anaheim Police Department." Quinzo informed the affiant that he suspected the suspects at the Chantilly address were involved in narcotics trafficking based on some 'profile' indicators and surveillance conducted at the location by the Anaheim Police Department. Quinzo further informed the affiant that Anaheim Police detectives had observed traffic to and from the residence during all hours of the day and night. Quinzo also told the affiant that detectives from Anaheim had seen subjects from 1166 South Chantilly go to 846 South Mancos on numerous occasions during their surveillance (CT 110-111).

On November 27, 1990 there were four vehicles observed at the Chantilly address. None of the vehicles listed in the affidavit were ever observed at any of the other locations referred to in the 58 page affidavit (CT 111). During the surveillance on November 27, 1990, there were 13 vehicles observed carrying approximately 20 male Hispanics, ranging in ages from 20 to 50 years of age (CT 111-114).

On November 28, 1990 detectives from the Orange Police conducted a surveillance at 250 East Mission Street in the City of Pomona and observed five vehicles containing approximately nine individuals, all of Hispanic descent, ranging in ages from 30 to 40 years of age (CT 114-118).

The probable cause for the issuance of the search warrant as related to the Chantilly address is summarized in the affidavit as follows:

> "Surveillance detectives following the primary subject 'Vidrios' to 1166 South Chantilly, Anaheim where the primary suspect 'Vidrios' dropp d off the passenger away from the location before going into a cul-de-sac residence. The Anaheim Police Department also had information indicating that the subject at the 1166 South Chantilly were possibly involved in the trafficking of narcotics and saw traffic to and from the residence during surveillance consistent with the subjects who traffic and control substances". (CT 124)

On December 5, 1990 Pomona Municipal Court Judge Jack P. Hunt issued the search warrant for all the cited buildings, persons and vehicles.

At 3:00 p.m. on December 6, 1990 the Orange Police Department executed the search warrant at 1166 South Chantilly.

On December 6, 1990 Police Officer James Jolliffe and other officers served a search warrant at 1166 South Chantilly in Anaheim (CT 4, 6-7). Officer Jolliffe knocked on the front door, announced the presence of the police in a loud voice and demanded entry (CT 9-11). He waited approximately 25 seconds and then kicked the door open after receiving no response (CT 10-11).

Petitioner and an elderly housekeeper were inside the house (CT 12). Officer Jolliffe showed petitioner a copy of the search warrant. Petitioner and Officer Jolliffe went to petitioner's bedroom where petitioner showed the officer where he had cocaine (CT 17). The police found a large quantity of cocaine, several hand guns and approximately $9,800 in cash (CT 5).

It was stipulated that one of the baggies of cocaine contained 89.80 grams, and the substance containing cocaine exceeded 57 grams in net weight (CT 18). Based on his training and experience, Officer Jolliffe opined that the cocaine was possessed for the purpose of sale (CT 18-19).

REASONS FOR GRANTING THE WRIT

In the case at bar, the only information that connects the address which is the subject of the search warrant with criminal activity is the undated information from "former narcotics Officer John Quinzo." According to the affidavit in support of a search warrant, Quinzo suspected that narcotics activity was occurring at 1166 Chantilly in the City of Anaheim based on some "profile" indicators. Further, according to the affidavit, Anaheim police officers conducted a surveillance of 1166 Chantilly in the City of Anaheim and concluded that there was activity consistent with narcotics transactions occurring at that address.

However, it is unknown from the affidavit in support of the search warrant when Quinzo received the information and it is unknown when their surveillance was conducted at 1166 Chantilly in the City of Anaheim. It is only known that the information was received from "former narcotics Officer Quinzo." The dates of this information are not given in the affidavit in support of the search warrant and cannot be ascertained from the information in the affidavit.

The identical situation has been considered by the United States Court of Appeals on three prior occasions but has never been considered by the United States Supreme Court.

The First Circuit Court of Appeals stated in *Rosencranz v. United States*, 356 F.2d 310 (1966) that

> "To make a double inference that the undated information speaks as of a date close to that of the affidavit and that therefore the undated observation made on the strength of such information must speak as of an even more recent date would be to open the door to the unsupervised issuance of search warrants on the basis of aging information. Officers with information of questionable recency could escape embarrassment by simply omitting averments as to time,

> so long as they reported that whatever information they received was stated to be current at that time. Magistrates would have less opportunity to form their "natural and detached" function. Indeed, if the affidavit in this case be adjudged valid, it is difficult to see how any function but that of a rubber stamp remains for them." (*Id.* at 316.)

The court goes on to state at 317

> "To create the possibility of ancient information parading beneath the protective mask of a bland, "present tense" warrant would not, in our opinion, be in the interest of proper law enforcement or justice."

The court's opinion points out the administrative problems in allowing undated information to be included in affidavits stating

> "Nor would the cause of improved judicial administration be served by increased reliance on motions to suppress evidence in order to expose the extent to which an affidavit, while true, might still be misleading. Such deferral of this issue would shift the responsibility of passing on the officer's judgment from the commissioner's to the trial court. To the extent this were done, the function of the warrant-issuing magistrate would wither away to the point of being a vestigial formality." (*Ibid.*)

And finally the court points out that it takes very little time and effort to insert into an affidavit the specific time of the observations stating,

> "With a small amendment, both magistrate and officer could have remedied the defect in this case. We see no policy served which would relieve them of this minimal burden." (*Id.* at 318)

The Sixth Circuit Court of Appeals has followed the First Circuit Court of Appeals in *United States v. Boyd* 422 F.2d 791 (1970) adopting the language from *Rosencranz.* (*Id.* 792)

However, the Fourth Circuit Court of Appeals concluded that the "good faith" exception to the exclusionary rule under *United States v. Leon,* 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) was sufficient to insulate the warrant from an attack of staleness. The court concludes

> "We, however, are troubled by the fact that there is no disclosure in the warrant, or in the affidavit, of either the date of the crime or the date upon which the defendant had offered to sell the pistol to the informants. It is not disputed that the warrant was issued on July 31, 1985 in connection with the investigation of a murder committed on June 19, 1985. The affidavit does state the law enforcement officer was contacted by one of the informants only 72 hours before he sought the warrant. However, the affidavit is silent as to when the defendant offered the pistol to the informants. Nevertheless, the "good faith" exception under *United States v. Leon,* 468 U.S. 897, 104 S.Ct. 3405, 84 L.Ed.2d 677 (1984) is available. We, therefore, affirm. There was no dispute over whether the magistrate or the investigator acted in good faith and we do not find the warrant to be fatally defective."

There are two conflicting standards for federal magistrates and those jurisdictions which follow federal law, such as California, in evaluating undated information in an affidavit in support of a search warrant. The first is that the information is presumed stale and of no value. Secondly, if the officer and magistrate act in "good faith" the undated information will be acceptable for probable cause to issue a search warrant to search a residence. The court in *United States v. Anderson,* 851 F.2d 727 (4th Cir. 1988) observed in footnote 1,

> ". . . We wish, nevertheless, to emphasize that sloppily prepared or executed warrants directly affront the Fourth Amendment to the United States Constitution. While *Leon* was present here to rescue a possibily defective warrant, judicial officers and policemen should exercise care to see their warrants and

> supporting affidavits are correct for the saving effect of *Leon* or other rescue operations will be by no means necessarily sufficient in another case."

The footnote in *Anderson* leads to the inescapable conclusion that the court views it's duty as applying *Leon* to effect a rescue operation on a "possibly defective warrant." While the United States Court of Appeals for the First Circuit in *Rosencranz* agrees that affidavits should be construed in a common sense manner and that doubtful cases should be resolved in favor of the warrant [1] that court was unwilling to "rescue" the warrant. In fact, at footnote 3, the *Rosencranz* court goes into a lengthy discussion of the importance of the timeliness of the information commencing with *Sgro v. United States,* 287 U.S. 206 53 S.Ct. 138, 77 L.Ed. 260 (1932). (*Id.* at 315).

There can be little doubt that the reasoning in *Rosencranz* is the better reasoning between the two standards. One can hardly minimize the importance of the timeliness of the information to support the probable cause for the issuance of a search warrant to allow the police to enter one's personal residence.

This area of search warrant law is ripe for consideration by this Court to clarify the law and avoid disagreement, confusion and uncertainty within the Federal Circuits.

Without this undated information, there is insufficient probable cause for the issuance of the search warrant for Mr. Gonzales's personal residence. Thus, the Court of Appeal erred in upholding the search warrant and should be reversed.

---

[1] *Rosencranz v. United States, supra* at 316.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the writ of certiorari should issue to review the decision of the California Court of Appeal in this case.

Respectfully submitted,

FRED W. ANDERSON
ANDERSON & ANDERSON
1851 E. First Street
Suite 1450
Santa Ana, CA 92705
(714) 835-4400

Dated: August 10, 1993

Attorney for Petitioner

APPENDICES

APPENDIX A

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

G011739

(Super. Ct. No. C-83964)

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

JUAN FRANCISCO GONZALES,
Defendant and Appellant.

OPINION

[Filed January 29, 1993]

APPEAL from a judgment of the Superior Court of Orange County, John M. Watson, Judge. Affirmed.

Fred W. Anderson for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Holly Wilkens and Sara Gros-Cloren, Deputy Attorneys General, for Plaintiff and Respondent.

Juan Francisco Gonzales pleaded guilty to possessing cocaine for sale, in an amount exceeding 28.5 grams of cocaine or 57 grams of a substance containing cocaine. His appeal relates solely to the denial of his Penal Code section 1538.5 motion.

I

On December 6, 1990, a search warrant was served at appellant's residence at 1166 South Chantilly in Anaheim. Appellant led police to his bedroom and showed them where he kept a large amount of cocaine. He now contends there was insufficient probable cause to issue the warrant and, when serving it, police violated the knock-notice requirement of Penal Code section 1531.

A. *Probable cause.*

The following is a summary of the allegations contained in the lengthy affidavit in support of issuance of a search warrant for appellant's residence, as well as many other places:

A confidential informant provided Detective Matt Miller with informaiton regarding a drug ring operating out of the Mayras Video store in Pomona. The informant had been arrested and was trading information in hopes of receiving special treatment in that case. The informant had provided information in the past leading to the arrest of another drug dealer and the seizure of a kilogram of cocaine.

The informant told Miller the videc store was owned by a man with the nickname "Memin," who was about 33 to 34 years old, heavyset, with black hair, and walked with a limp. He drove a silver Ford Thunderbird. The informant had purchased cocaine and marijuana from Memin at the video store on a number of occasions.

The informat stated that when drug purchases are made at the video store, the contraband is concealed in plastic or paper bags. When videos are rented, the business does not package them. Although the cocaine and marijuana is usually kept at the store, Memin sometimes has to travel a short distance to obtain larger quantities. The informant had accompanied Memin once to the

home of a person known as "Nacho," where Memin purchased a large quantity of marijuana.

Miller and other detectives conducted a surveillance of the video store for several consecutive days. They saw numerous Hispanic males enter the store, remain for a short period of time, and leave empty-handed. Some were seen carrying large plastic bags that appeared to be heavy and consistent in size with kilo packages of cocaine or heroin. Those renting videos left carrying the cassettes, without a bag. A registration check of their automobiles revealed many of the registered owners lived a great distance from the video store (e.g., Fresno, Dana Point, Santa Ana). Some of them wore beepers.

On the first day of surveillance, a man fitting the informant's description of Memin arrived, wearing a beeper, with another Hispanic male. They left a few minutes later and were seen using "countersurveillance" driving techniques. Memin returned to the video store an hour later and met with another Hispanic male and the two drove to an address on 10th Street in Pomona. While they were there, police observed other individuals leaving the residence and using countersurveillance driving techniques.

Later, Memin drove to a residence on East Elm in Anaheim. According to former narcotics officer Quinzo, this residence has been the subject of an investigation by the Anaheim police as a result of information received through "We-Tip, Inc." The caller had reported heavy traffic at all hours and alleged that the Hispanic males residing there were selling drugs.

The next day, police saw Memin arrive at the video store but leave two minutes later. He went to the house on 10th Street and returned to the video store. Soon after, a Hispanic male left the store carrying a heavy plastic bag.

Later that day, Memin went back to the 10th Street house, stayed 15 minutes, and returned to the store. Memin made a third trip that day with two males whose car had been seen the previous day at the Elm Street residence. While Memin was gone, a man entered the video store, left empty-handed, and used the pay phone outside the store. He then waited until Memin arrived and talked to him.

Some time later, another male arrived, met Memin in the parking lot, and the two men drove in separate cars to a location where the man left his car and got into Memin's. They then drove to the 10th Street house and went inside. When they emerged, they went to the trunk of Memin's car and Memin later took the man back to his car.

Less than an hour later, two other males arrived and yet another trip was made to the 10th Street house. Another car met them there and, for a time, both cars' trunks were opened.

On the third day of surveillance, similar activity was observed, i.e., numerous trips to 10th Street, Hispanic males arriving, and leaving either empty-handed or carrying large, heavy plastic bags. Some of these individuals had been there on the previous days.

On November 27, 1990, Memin and another Hispanic male left the video store in Memin's car. Memin took the man to the 10th Street house, then drove to 1166 South Chantilly in Anaheim, a residence located in a cul-de-sac. Memin dropped the other man off about a quarter-mile from the house and proceeded alone. Detective Miller stated it was common practice not to allow strangers to accompany dealers to their drug sources, as a safety precaution. He also attested that cul-de-sac houses are favored by drug dealers because it is easier to spot surveillance. When he left the house, he used countersurveillance driving techniques. He then picked

up the other man and, a short time later, used a pay phone.

The Chantilly residence had been under observation and its residents suspected of trafficking in narcotics, due to "profile" indicators. People were seen going in and out at all hours and the residents appeared to have no legitimate means of income.

The surveillance of the video store continued for the next two days, and police observed heavy activity similar to that seen previously.

B. *Argument.*

Appellant claims the foregoing does not amount to probable cause for issuance of the search warrant for the Chantilly residence. In essence, his argument amounts to a listing of the circumstances described in the affidavit, followed by a possible innocent explanation for each. For example, he argues the numerous males who left the video store with heavy bags could have been carrying multiple videos, not narcotics. He also maintains that because the affidavit used vague terms such as "the area of 1166 Chantilly," it is unclear whether Memin actually went into the residence. Moreover, he insists there is no evidence of anything actually occurring at that residence.

This case, which is a prime example of the intricate and sophisticated web of a modern narcotics enterprise, presents a perfect vehicle for the rule of *Illinois* v. *Gates* (1983) 462 U.S. 213. There, the United States Supreme Court adopted an approach to evaluating probable cause in a search warrant which examines the totality of circumstances: "The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in

a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for . . . conclud[ing]' that probable cause existed." (*Id.* at pp. 238-239.)

The informant's reliability and basis of knowledge in this case was tested in two ways. First, the person's reliability had been previously tested by supplying accurate information leading to the seizure of narcotics. Second, it was corroborated by extensive police surveillance. And surveillance of seemingly innocent activity may prove sufficient if it casts the activity in a suspicious light. (*Id.* at p. 244, fn. 13.)

The informant stated he or she had bought cocaine from Memin at the video store and had seen other drugs sold there. Memin was accurately described, as was his pattern of leaving the store, travelling a short distance (presumably to pick up narcotics) and returning to the video store. Frequently, these visits were to the 10th Street residence but, on occasion, other places were visited, including appellant's. Moreover, the surveillance established patterns consistent with large-scale drug traffic, such as numerous short visits by individuals who either left empty-handed or with heavy bags. These were distinguishable from legitimate video patrons, who left carrying the videos. Police also viewed what appeared to be "beeper" calls from the pay telephone located outside the store, as well as countersurveillance driving. Both activities are, according to the affiant, consistent with a drug operation. Memin dropped another man off a short distance from appellant's house and then proceeded alone. It is reasonable to infer he was protecting the source of his drug supply.

Appellant argues the language in the affidavit was vague and did not actually state Memin went inside the residence at Chantilly. The affidavit stated police followed Memin and another man "to the area of 1166 Chantilly, Anaheim" and that "prior to making contact

at 1166 Chantilly, Anaheim, . . . [Memin] . . . dropped off the other subject, approximately a quarter-mile away from the residence." The affiant then stated Memin "left the residence, utilizing 'countersurveillance' driving techniques . . ." While the phraseology is somewhat vague, the meaning is clear—Memin went to the residence and left from there. Moreover, clarification was provided. The affiant later noted that another officer had observed certain other vehicles at the Chantilly house during the time Memin was "at that residence." Another officer is also quoted as seeing Memin go "into the cul-de-sac residence."

Appellant also challenges the information received from Quinzo as being stale. Although no dates were given of the surveillance, appellant infers the information was stale by assuming it was acquired while Quinzo was still in active service. He also argues the absence of specific dates in the affidavit made the information worthless. When appellant raised this point in the trial court, the judge agreed the failure to include dates lessened the worth of the information. He determined, however, that, even giving it minimal weight, there was sufficient probable cause. We agree. The omission of dates goes to the weight given to the supplied information.

Finally, appellant argues the affidavit should have stated the precise "drop-off" point at which Memin left his companion before proceeding to the Chantilly house and also should have described, in detail, the countersurveillance driving that was observed when he left the house. We agree with respondent that these points are insignificant. It is the drop-off and countersurveillance driving which are significant; the manner or location is of no moment.

Each detail is admittedly but a small piece of the puzzle, but they combine with the training and expertise of the affiant to supply probable cause for issuance of the warrant.

II

In a nearly frivolous argument, appellant next assets the trial court's denial of his "knock-notice" motion, pursuant to Penal Code section 1531,[1] was arbitrary and capricious. At the hearing on the motion, Officer Belville testified officer Joliffe knocked loudly, announced their presence, and waited 25 to 30 seconds before going in. Appellant testified he was in a position where he would have heard a knock but did not hear it or an announcement. The trial court believed the officer, not appellant.

Appellant claims this finding reveals the court's "natural bias in favor of law enforcement" and shows it "was not neutral and, therefore, was acting arbitrarily and capriciously." He comes to this remarkable conclusion because Officer Belville, on cross-examination, could not recall the number of knocks and did not remember whether he saw appellant when he entered the house. He also notes the trial court stated, "And I'm bearing in mind that the defendant is the defendant in this case; and obviously, I assume, would like not to face these charges. [¶] . . . [¶] It's just a credibility issue. And I resolve that in favor of the officer. I believe him. I don't believe your client [the defendant]." Appellant concludes the court was implying that defendants are not believable and police officers are, revealing its bias.

In resolving issues of credibility, the fact finder is required to weigh various factors, including the witness's motive to lie. The trial court's observation that appellant had such a motive was perfectly proper and accurate. Nothing in Officer Belville's testimony revealed him to be lying or to have a motive to do so. On the contrary, he

---

[1] Penal Code section 1531 states: "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a warrant, if after notice of his authority and purpose, he is refused admittance."

candidly admitted not knowing precisely the number of knocks or the appellant's location at the time of entry. There is no indication of an abuse of discretion.

The judgment is affirmed.

SONENSHINE, J.

WE CONCUR:

SILLS, P. J.

WALLIN, J.

APPENDIX B

[Filed May 12, 1993]

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL

Fourth Appellate District, Division Three, No. G011739
S031591

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

THE PEOPLE,

Respondent

v.

JUAN FRANCISCO GONZALES,

Appellant

Appellant's petition for review DENIED.

/s/ Lucas
Chief Justice